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OFFICE OF PETITIONS

In re Application of
David Morrow, Jessie Hubbard, and Salvatore
Locascio

Application No. 09/837,826

Filed: April 18, 2001

Attorney Docket No.: WLI 1012 PUS

Title: LACROSSE GOALIE STICK HEAD

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a)¹, filed November 22, 2002, to revive the above-identified application. On January 27, 2003, the petitioner filed a petition under 37 CFR 1.137(b)² via facsimile transmission.

The facsimile transmission sheet requested that the petition under the unintentional standard be filed "in lieu of" the previously filed petition filed under the unavoidable standard. As such, the petition under 37 CFR 1.137(a) has been **DISMISSED AS MOOT**. The petition fee has not been charged to petitioner's Deposit Account.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed May 15, 2002, which required the applicant to file an

1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(l);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

executed oath or declaration, along with the fee associated with the late filing of an oath of declaration. The notice set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on July 16, 2002.

With the instant petition, petitioner has included the petition fee³, and has made the proper statement of unintentional delay. A statement of facts from the attorney of record was included with the previous petition.

The later petition lacks item (1) above.

Regarding the first requirement, the requirement has not been satisfied because Petitioner did not submit the required reply to the notice. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed⁴. In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(a)(1). The Notice indicated that the application had been filed without an executed oath or declaration, and indicated that one would need to be supplied, along with the required surcharge of \$65.00 for the late filing fee of an oath or declaration for a small entity. The petition was not accompanied by either of these requirements. Although the petition indicates that these were previously filed on November 14, 2002, neither of these requirements have been found after the completion of a review of the Patent Application Location Monitoring system and a search of the official file.

Therefore, this petition under 37 C.F.R. §1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.



Paul Shanowski
Attorney
Office of Petitions
United States Patent and Trademark Office

³ Petitioner has included the wrong amount for the petition fee. The deficient \$10 has been charged to his deposit account, as authorized in the Fee Transmittal sheet included upon filing.

⁴ See M.P.E.P. 711.03(c).